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Attorneys for Federal Deposit Insurance Corporation as Receiver  
for Defendant IndyMac Federal Bank, FSB

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

EDEN GARDEN LLC, a California limited liability company; ALI K. AMIDY, an individual; GUITI NAHAVANDI AMIDY, an individual; CENTRA NET INVESTMENT LLC, a California limited liability company,

Plaintiffs.

v.

INDYMAC VENTURE, LLC, a Limited Liability Company; FEDERAL DEPOSIT INSURANCE CORPORATION, as Conservator of IndyMac Federal Bank, FSB, and DOES 1-10.

## Defendants.

No. CV-11-02356-JF

*This matter assigned to Honorable Jeremy  
Fogel, Courtroom No. 3, for All Purposes*

**NOTICE OF MOTION AND MOTION  
OF FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER OF  
DEFENDANT INDYMAC FEDERAL  
BANK, FSB TO DISMISS CLAIMS**

**[F.R.C.P. Rules 12(b)(6) and 12(b)(1)]**

Date: August 5, 2011  
Time: 9:00 a.m.  
Dept: Courtroom No. 3  
Judge: Honorable Jeremy Fogel

Filed Concurrently Herewith:

1. Memorandum of Points and Authorities;
2. Declaration of James P. Gazdecki;
3. Declaration of Jack W. Schwartz, Jr.;
4. Request for Judicial Notice; and
5. [Proposed] Order – *Lodged herewith*

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 5, 2011, at 9:00 a.m., or as soon thereafter as may be heard, before the Honorable Jeremy Fogel, presiding, in the United States District Court for the Northern District of California, San Jose Division, located at 280 South First

1 Street, San Jose, California 95113, Courtroom No. 3, the Federal Deposit Insurance Company as  
 2 Receiver of Defendant INDYMAC FEDERAL BANK, FSB ("FDIC – Receiver"), erroneously  
 3 sued herein as FEDERAL DEPOSIT INSURANCE CORPORATION, as Conservator of  
 4 IndyMac Federal Bank, FSB, by and through its undersigned counsel, will and hereby does  
 5 move the Court to dismiss the Complaint of Plaintiffs EDEN GARDEN LLC, a California  
 6 limited liability company; ALI K. AMIDY, an individual; GUITI NAHAVANDI AMIDY, an  
 7 individual; CENTRA NET INVESTMENT LLC, a California limited liability company  
 8 (collectively "*Plaintiffs*") against FDIC – Receiver for failure to state a claim upon which relief  
 9 can be granted pursuant to Federal Rule of Civil Procedure Rule 12(b)(6) and lack of subject  
 10 matter jurisdiction pursuant to Federal Rule of Civil Procedure Rule 12(b)(1).

11 This motion is based on the following grounds:

12 1. This Court should dismiss the Complaint against the FDIC – Receiver pursuant to  
 13 Federal Rule of Civil Procedure Rule 12(b)(6) because Plaintiffs seek equitable remedies against  
 14 FDIC – Receiver. Equitable claims against FDIC – Receiver are precluded by 12 U.S.C.  
 15 §1821(j) which provides: "Except as provided in this section, no court may take any action,  
 16 except at the request of the Board of Directors by regulation or order, to restrain or affect the  
 17 exercise of powers or functions of the Corporation as a conservator or a receiver."

18 2. This Court lacks subject matter jurisdiction over Plaintiffs' Complaint against the  
 19 FDIC – Receiver pursuant to Federal Rule of Civil Procedure Rule 12(b)(1). Specifically, the  
 20 Complaint fails to present a justifiable case or controversy as required by Article III of the  
 21 United States Constitution. First, Plaintiff has failed to exhaust the mandatory administrative  
 22 claim procedure required of creditors by 12 U.S.C. § 1821(d)(3) – (13) before filing or  
 23 continuing litigation against FDIC – Receiver. Second, this Court cannot provide meaningful  
 24 relief to Plaintiff due to the worthlessness determinations made by the FDIC Board of Directors.

25 3. Alternatively, this Court should dismiss the Complaint against the FDIC –  
 26 Receiver pursuant to Federal Rule of Civil Procedure Rule 12(b)(1) on Prudential Mootness  
 27 grounds. Specifically, this Court should not allow Plaintiffs' continued litigation of claims  
 28 against the FDIC – Receiver where no recovery is possible because it is an exercise in futility

1 and would needlessly consume judicial resources.

2 This Motion is based upon this Notice of Motion and the Memorandum of Points and  
3 Authorities, Declaration of James P. Gazdecki, Senior Attorney for the FDIC – Receiver,  
4 Declaration of Jack W. Schwartz, Jr. and Request for Judicial Notice, all filed concurrently  
5 herewith, the papers, records and file herein and such evidence as may be presented at the  
6 hearing on the motion.

7 Dated: June 10, 2011

BURNHAM BROWN

8  
9 By:

DAVID H. WATERS  
JACK W. SCHWARTZ, JR.  
Attorneys for Federal Deposit  
Insurance Corporation as Receiver  
for Defendant IndyMac Federal  
Bank, FSB

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